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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,606

01/10/2007

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EXAMINER

GRANO, ERNESTO ARTURIO

ART UNIT

PAPER NUMBER

3728

NOTIFICATION DATE

DELIVERY MODE

02/12/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketadministrator@mwv.com

Office Action Summary	Application No. 10/595,606	Applicant(s) AUCLAIR, JEAN MICHEL	
	Examiner ERNESTO A. GRANO	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/07/2006 and 06/27/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

EAG

DETAILED ACTION

Specification

1. The abstract of the disclosure does not commence on a single separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

Claim Objections

2. Claims 8 and 14-15 objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim 7. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-7 and 9-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the upper row of cartons" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said lower row of articles" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "the upper row of articles" in line 23. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "the respective end" in line 28. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "the top and bottom stopper" in line 32. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "the stopper" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "the rearmost article" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the adjacent stopper" in line 17. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "the tear line" in lines 20. There is insufficient antecedent basis for this limitation in the claim or in claims 1-3.

Claim 9 recites the limitation "the respective end edge" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "the top and bottom" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claims 10 and 11 recites the limitation "the respective end edge" in lines 16 and 29. There is insufficient antecedent basis for this limitation in the claim.

Claims 9-12, recites the limitation "comprises a top and bottom stopper" in line 5 of each, this limitation is indefinite as to its meaning, as is a top(per se) and a bottom stopper (per se) being defined.

Claims 9-12 recites the limitation "the respective side wall" in lines 4, 16, 29 and 13. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the end retention structure" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the inside surface" in line 13. There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "the adjacent end edge" in line 19. There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "the end edge" in line 17. There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "the other part" in line 18. There is insufficient antecedent basis for this limitation in the claim.

Double Patenting

5. Applicant is advised that should claim 10 be found allowable, claim 11 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing

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one claim to object to the other as being a substantial duplicate of the allowed claim.

See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, and 7, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Bates (US 2002/0070139).

In re claim 1, Bates discloses a carton for cans in two rows wherein a base wall of the carton is formed from a pair of overlapping panels 168a-b of the carton secured together so that the carton walls are tensioned around articles C contained in the carton wherein the carton is adapted to be utilized such that a lower most row of cans is in rolling contact with one of the carton side walls disposed to act as the base of the carton and wherein article retaining means 180 are provided at least partially to close one end of the carton to discourage dislodgement of the articles C from that end of the carton and access means 120 is provided at said one end of the carton, the removal of which releases the upper row of cartons (articles) from restraint by said article retaining means 180 but maintains said article retaining means 180 effective for said lower row of articles, and wherein removal of the access means further relieves tension of the carton

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walls about said articles to facilitate their removal from that end of the carton. (see figures 5 and 6)

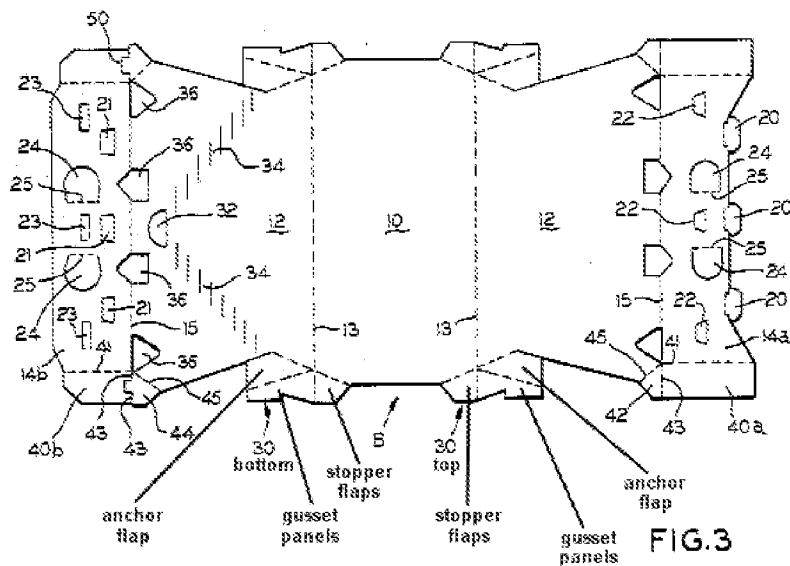
In re claim 2, Bates discloses wherein the access means 120 comprises removable portions of the side wall panel acting as a top wall of the carton and adjacent portions of each of the top and base walls acting as opposed side walls sufficient to expose the endmost articles C, remove the restraining means from the uppermost row of articles C and relieve tension in the carton walls relative to the carton contents. (see figures 5 and 6)

In re claim 3, Bates discloses wherein the access means 120 further includes a secondary removable portion 214 which further opens said side wall panel (acting as a top wall) towards the opposite end of the carton thereby further facilitating removal of the upper row of articles C. (see figures 5 and 6)

In re claim 7, Bates as applied to claims 1-3 above, discloses wherein a tear line traverses the one sidewall extends into both the top and bottom of the carton.

8. Claims 9-11 and 13, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Kipp (US 3,963,121).

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In re claim 9, Kipp discloses a carton wherein one side is formed from a composite wall comprising a pair of overlapping panels 14a and 14b secured together so that the carton may be tensioned around articles A contained in the carton, the carton further comprises end retention means at each end of the carton to at least partially close the respective end (see figure 1), wherein at least one of the end retention means comprises a top and bottom stopper 30 to prevent dislodging of the articles from the respective end of the carton, which carton further comprises a tear line 34 which defines an at least two part removable device characterised in that each stopper 30 comprises an anchor flap hingedly connected to the respective end edge of the respective side wall 12 and in a fiat face contacting relationship with the inside surface of the respective sidewall, a pair of top and bottom stopper flaps hingedly connected to the top and bottom respectively and extending toward each other, and a pair of gusset panels each hingedly interconnecting the anchor flap with respective one of top and bottom stopper flaps. (see figure 3 above)

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In re claims 10-11, Kipp discloses a carton wherein one side is formed from a composite wall comprising a pair of overlapping panels 14a and 14b secured together so that the carton may be tensioned around articles A contained in the carton, the carton further comprises end retention means at each end of the carton to at least partially close the respective end (see figure 1), wherein at least one of the end retention means comprises a top and bottom stopper 30 to prevent dislodging of the articles from the respective end of the carton, which carton further comprises a tear line 34 which defines an at least two part removable device characterised in that each stopper 30 comprises a stopper flap hingedly connected to the respective end edge of the respective side wall 10 and extending away from the respective side wall 10, a pair of top and bottom anchor flaps hingedly connected to the top and bottom respectively and folded in fiat face contacting relationship with the inside surfaces of the top and bottom respectively, and a pair of gusset panels each hingedly interconnecting the stopper flap with respective one of the top and bottom anchor flaps (see figure 3 above)

In re claims 13, Kipp discloses wherein the end edge of each top and bottom adjacent tear line 34 has a free section that is free of connection to the other part of the carton, and wherein the tear line extends to the free section of the adjacent end edge of each of the top and bottom.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4, 6, and 7, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bates (US 2002/0070139).

In re claim 4, Bates discloses a carton wherein one wall of the carton is formed from a composite wall comprising a pair of overlapping panels 168a-b secured together so that the carton is tensioned around articles C contained in the carton, the carton further comprising end retention means 180 at an end of the carton to at least partially close the respective end, wherein the end retention means 180 comprises opposed stopper flaps to prevent dislodgement of the articles from the respective end of the carton, which carton further comprises a tear line which defines an at least two part removable device 214 and 120 characterised in that a first portion 120 of the at least two part removable device 214 and 120, includes a part of both the top and bottom stopper at a first end of the carton and a second part of the at least two part removable device extends from the first portion 120 towards a second end of the carton, the at least two-part removable device designed so that when the first portion 120 is removed, access to the articles C contained at said first end of the carton can be gained whilst a remaining part of the stopper substantially retains the articles C, the rearmost articles C are retained by the carton until the second part 214 of the at least two part removable device 214 and 120 is removed releasing the tension in the carton allowing substantial release of the articles C contained proximate the second end of the carton.

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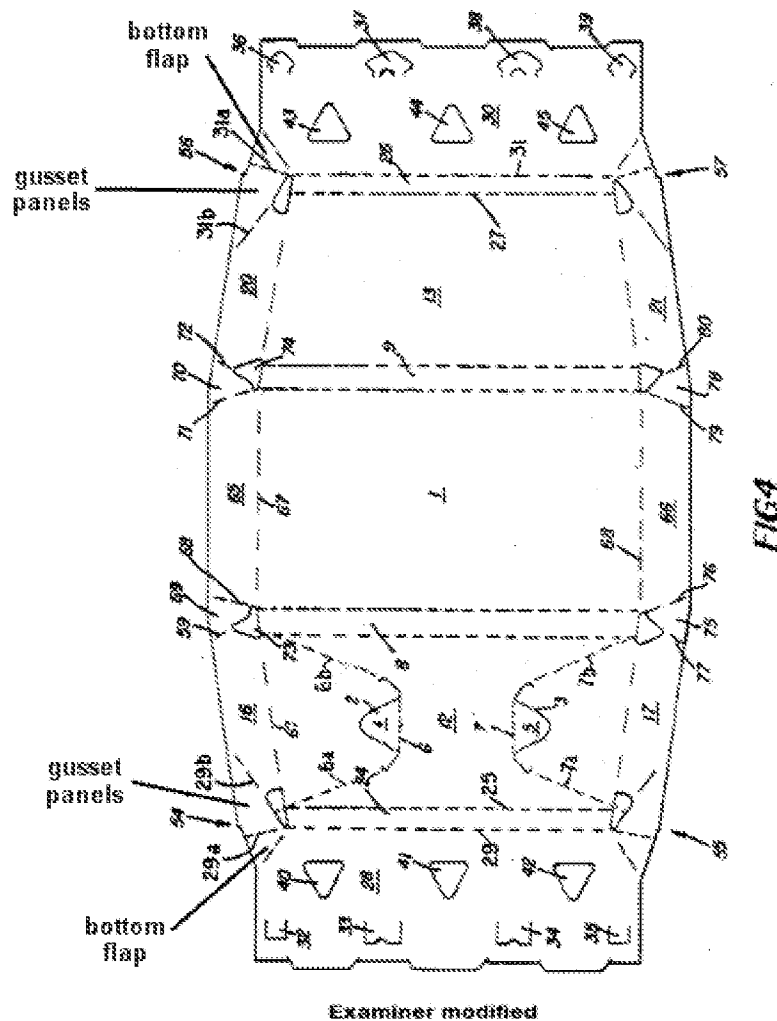
However, Bates fails to disclose a second end retention means at another end of the carton to at least partially close that respective end. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a second end retention means at another end of the carton to at least partially close that respective end, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

In re claim 6, Bates discloses wherein only one of the side walls is formed with a tear line for removing the adjacent stopper from the carton when one side wall is torn along the tear line. (see figure 5)

In re claim 7, Bates as applied to claims 4 and 6 above, discloses wherein the tear line traverses the one sidewall extends into both the top and bottom of the carton.

11. Claims 1, 4-5, and 7, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Oliff (US 5,000,313).

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In re claim 1, Oliff discloses a carton for cans in two rows wherein a base wall of the carton is formed from a pair of overlapping panels 28 and 30 of the carton secured together so that the carton walls are tensioned around articles C1-4 contained in the carton wherein the carton is adapted to be utilized such that a lower most row of cans is in rolling contact with one of the carton side walls disposed to act as the base of the carton and wherein article retaining means 54, 56, and 65 are provided at least partially to close one end of the carton to discourage dislodgement of the articles C1-4 from that end of the carton and access means is provided at said one end of the carton, and

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wherein removal of the access means further relieves tension of the carton walls about said articles to facilitate their removal from that end of the carton. (see figures 4 and 5)

However, Oliff fails to disclose the removal of which releases the upper row of cartons (articles) from restraint by said article retaining means but maintains said article retaining means effective for said lower row of articles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to relocate access means in order to have access means on the cartons side. The access means perform the same function whether located on a top panel or side panel. (see figure 4 above) It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

In re claim 4, Oliff as modified above discloses a carton wherein one wall of the carton is formed from a composite wall comprising a pair of overlapping panels 28 and 30 secured together so that the carton is tensioned around articles contained in the carton, the carton further comprising end retention means at an end of the carton to at least partially close the respective end, wherein the end retention means comprises opposed stopper flaps 54 and 69 to prevent dislodgement of the articles from the respective end of the carton, which carton further comprises a tear line which defines an at least two part removable device characterised in that a first portion of the at least two part removable device, includes a part of both the top and bottom stopper at a first end of the carton and a second part of the at least two part removable device 2 extends from the first portion towards a second end of the carton, the at least two-part removable device designed so that when the first portion is removed, access to the articles

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contained at said first end of the carton can be gained whilst a remaining part of the stopper substantially retains the articles, the rearmost articles are capable of being retained by the carton until the second part 2 of the at least two part removable device is removed releasing the tension in the carton allowing substantial release of the articles contained proximate the second end of the carton. (see figure 4 above)

In re claim 5 and 12, Oliff as applied to claim 4, discloses an end retention structure comprising two pairs of top and bottom end flaps, and a pair of side end flaps 16 and 20 each connected to the respective top 65 and bottom end flaps through a pair of gusset panels 69-70, wherein each side end flap is folded inwardly and lying fiat with the inside surface of the respective side wall, and wherein a tear line traverses one of the side walls and extends into the top and bottom to define a removable portion including one of the side end flaps 16 and its associated pair of top and bottom end flaps. (see figure 4 above)

In re claim 7, Oliff as applied to claims 5 above, discloses wherein the tear line traverses the one sidewall extends into both the top and bottom of the carton.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Oliff (US 5,060,792, Sutherland (6,021,898), (US 5,551,556), (US 5,542,536), (US 542,536), Killy (US 4,396,143), Hunt, Jr. (US 4,214,660), Freidus et al. (US 6,253,930), Dutcher et al. (US 4,405,078), and Brown (US 5,857,570) all disclose a similar carton for articles such as cans.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERNESTO A. GRANO whose telephone number is (571)270-3927. The examiner can normally be reached on 7:00am - 4:00pm Mon.-Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bryon P. Gehman/
Primary Examiner, Art Unit 3728

/Ernesto A Grano/
Examiner
Art Unit 3728

EAG